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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,241	01/31/2001	John C. Molander	8409	6142

27752 7590 06/28/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,241

Applicant(s)

MOLANDER ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 7, 12-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7, 12, 14 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 9, 2006 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner

to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 5, 7, 12, 14 and 16 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles et al. (US 5,899,895).

As to claim 1, Robles et al. (hereinafter "Robles") discloses a disposable article comprising a containment assembly having longitudinal edges and end edges and at least one elastomeric side panel carried by the containment assembly (Figure 3), and extending outwardly, the at least one elastomeric side panel including an inner region having at least one discontinuity for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force wherein the at least one discontinuity is surrounded by the inner region, wherein the at least one discontinuity is defined by a cut line, wherein the at least one cut line is disposed substantially parallel with a first lateral edge of the at least one elastomeric side panel (col. 24, lines 33 – 46 and col. 26, lines 26 – 29) wherein the at least one elastomeric side panel further includes a waist region and leg region separated thereof by the at least one discontinuity, the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force and wherein the waist region and leg region have an extensibility as set forth in col. 24, lines 28 – 46 and col. 26, lines 26 – 29.

The difference between Robles and claim 1 is the provision that the waist region has an extensibility varying from about 5g/mm to about 50 g/mm and the leg region has an extensibility varying from about 1 g/mm to about 30 g/mm,

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the waist and leg elasticity with specific parameters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

As to claim 5, Robles discloses a disposable article wherein the waist region has a greater width than the leg region as set forth in col. 12, line 55 to col. 13, line 5.

As to claim 7, Robles discloses a disposable article wherein at least one cut line is rectilinear (i.e. the disclosure of a slit) as set forth in col. 24, lines 28 – 46.

With respect to claim 12, Robles discloses a disposable article further comprising a second cut line and a third cut line as set forth in col. 24, lines 33 – 46 and col. 26, lines 26 – 29.

The difference between Robles and claim 14 is the provision that the cut line is curvilinear.

Robles teaches the use of cut lines in col. 24, lines 33 – 46 and col. 26, lines 26 – 29.

It would have been obvious to one of ordinary skill in the art to modify the shape of the cut line to provide a curvilinear line if desired because Robles teaches the use of multiple shapes for the cut line as set forth in col. 24, lines 33 – 46.

As to claims 16 and 17, Robles discloses a disposable article wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 0 to about 45° relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 10 to about 35° relative to the lateral centerline of the disposable article; wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 10 to about 150 relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 20 to about 30 relative to the lateral centerline of the disposable article as set forth in col. 11, line 51 to col. 12, line 6.

With respect to claims 18 and 19, see the rejection of claim 1.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed June 9, 2006 have been fully considered but they are not persuasive.

Regarding the applicant's argument that Robles does not teach or suggest an article wherein the at least one discontinuity is defined by a cut line disposed substantially parallel with a first lateral edge of the at least one elastomeric side panel, the examiner disagrees. Robles discloses that the extensible side panel may comprise a cut or slit running the entire distance between the proximal edge 80 to the distal edge 82 as set forth in col. 24, lines 39 – 42. As shown in figure 1, the distance between the proximal edge and the distal edge is a lateral one. Therefore, the line extending between the two points would be substantially parallel with a lateral edge of the side panel as shown in figure 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell
Primary Examiner
Art Unit 3761